Commenter: WorldCom, Inc.
Applicant: BellSouth
State: Louisiana
Date: November 25, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Application by BellSouth	)	
Corporation et al. for Provision of	)	CC Docket No. 97-231
In-Region, InterLATA Services in	)	
Louisiana	)	

COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO BELLSOUTH APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA

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Dated: November 25, 1997

Commenter: WorldCom, Inc.
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EXECUTIVE SUMMARY

The application relies on interconnection agreements with PCS providers to achieve Track A status. However, PCS providers are not "competing providers" for purposes of Track A, for two reasons. First, the interconnection requirements of PCS providers are significantly different from those of wireline CLECs. Consequently, operational experience under BellSouth interconnection agreements with PCS providers has little relevance to CLEC interconnection and cannot be used as a basis for concluding that BellSouth's "paper promises" will actually work in practice. Second, PCS providers sell a complementary service to a niche market that is not a realistic competitive alternative to the vast majority of telephone users.

Under either Track, the application must be denied because BellSouth has not complied with the competitive checklist.

First, BellSouth has submitted inadequate data to support its claim of nondiscriminatory access to OSS. The data does not comply with the requirements the Commission established in Ameritech Michigan, The inadequacy of BellSouth's data is particularly significant in light of BellSouth's record of inadequate provision of OSS in its dealings with WorldCom.

Second, BellSouth has not shown that it will exercise its "right to disconnect" under the Eighth Circuit's recent decision in a manner consistent with its obligations to refrain from discrimination and to provide access in a manner that allows requesting carriers to combine elements to provide telecommunications service. BellSouth's insistence on disconnecting by pnysically separating wires, rather than utilizing electronic controls, not only imposes unneeded

costs, but is discriminatory because BellSouth uses electronic controls when it disconnects and reconfigures for its own purposes. In addition, BellSouth's insistence on collocation in order to combine elements it has disconnected imposes unnecessary costs. Collocation is a process for permanent placement of equipment on ILEC premises to achieve network interconnection; it is neither legally required nor appropriate to afford the temporary access needed by CLECs to combine network elements that the ILEC has disconnected.

Third, BellSouth is refusing to pay reciprocal compensation for transport and termination of local calls to CLEC telephone exchange customers who just happen to be information service providers. That refusal violates the competitive checklist, as well as BellSouth's voluntarily negotiated interconnection agreement with WorldCom.

Finally, the public interest requires denial of the application. Once BellSouth obtains interLATA authority, it will be an easy matter for it to offer its existing local exchange customers a full service package including long distance. By contrast, local exchange competitors in Louisiana face a long and uncertain road before they can offer full service packages, including local service. The Commission's goal should be to ensure that changing local carriers will be as easy as changing long distance providers. Until that happens -- and Lousiana is very far from that goal -- allowing BellSouth into the long distance market would create a lopsided market, depriving consumers of any real competitive choice.

Commenter: WorldCom, Inc.
Applicant: BellSouth
State: Louisiana
Date: November 25, 1997

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COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO BELLSOUTH APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA

WorldCom, Inc. hereby submits its comments on the Section 271 application for in-region interLATA authority in Louisiana, filed by BellSouth Corporation et al. ("BellSouth") on November 6, 1997.

INTRODUCTION

WorldCom, Inc., through its wholly-owned subsidiaries WorldCom Technologies, Inc., MFS Telecom, Inc., WorldCom Network Services, Inc. (d/b/a WilTel Network Services), and UUNET Technologies, Inc. (collectively "WorldCom"), provides a full range of telecommunications and information services, including local, intrastate, interstate, and international services. WorldCom is currently the fourth largest long distance carrier in the United States and is a leading provider of competitive local exchange service. WorldCom -- with its traditional long distance operations, its competitive local exchange carrier ("CLEC") business, and its UUNet Internet service provider affiliate -- is uniquely positioned to take advantage of the opportunities presented by the 1996 Act to bring a wide range of choices for

telecommunications and information services to customers everywhere.

The ability of WorldCom and others to provide competing local exchange and full service offerings to all customers, especially residential customers and those in rural areas, depends largely on the success of the BOCs' implementation of the 1996 Act. In particular, WorldCom needs nondiscriminatory access to BellSouth's unbundled network elements, at cost-based rates, with the ability to combine those elements in any technically feasible configuration with each other and with WorldCom's own facilities. WorldCom also needs access to BellSouth's operational support systems ("OSS") that give it the practical, as well as the theoretical, ability to be a local service provider using BellSouth's network. As BellSouth's Section 271 application makes clear, however, competitive conditions are a long way from the point at which the Commission can declare that the Act is fully implemented and the opportunities it provides for competitive entry into the local market are truly available.

Initially, the application is defective because it seeks authority under Track A, exclusively in reliance on the presence of PCS providers in the market. PCS providers are not "competing providers" for purposes of eligibility for Track A, because their access and interconnection requirements are significantly different from those of wireline competitors, and because the services they offer are not a substitute for wireline service.

In any event, whether pursuant to Track A or Track B, the application must be denied, because BellSouth has not demonstrated its compliance with the competitive checklist.

BellSouth's application relies on the OSS which it uses throughout its region. However, WorldCom's experience with those systems in other states in BellSouth's region has not been

satisfactory. The data BellSouth presents, purporting to show that it has provided OSS to CLECs in its region that is equivalent to the support it provides internally, is seriously flawed. The data does not comply with the requirements the Commission established in Ameritech Michigan;[1] indeed, instead of complying with those requirements, BellSouth openly defies the decision and does not even purport to comply. On this basis alone, the application should be denied. In Ameritech Michigan the Commission carefully laid out a roadmap for section 271 applications. In an area where certainty is so important, the Commission should not now alter the rules.

In addition, BellSouth has failed to show that it will afford adequate and nondiscriminatory access to CLECs to permit them to combine unbundled elements whether or not BellSouth has separated those elements before providing them to the requesting carrer. BellSouth also has refused to pay reciprocal compensation for local calls to ISP providers who happen to be customers of CLECs, in violation of its obligations under the Act and the competitive checklist.

Finally, public interest factors dictate denial of the application. By relying on its regionwide performance to support the application, BellSouth clearly expects this application to be a precedent for obtaining Section 271 authority throughout its region. Once it obtains interLATA authority, it will be an easy matter for BellSouth to provide long distance service to its local customers. It can take advantage of several competing nationwide interexchange networks and an automated primary interexchange carriers change process which has the

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[1] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, cc Docket No. 97-137 (rel. August 19, 1997) ("Ameritech Michigan").

capability of switching long distance carriers for more than 30 million customers annually.[2] The local exchange market in Louisiana and the rest of BellSouth's region, where almost no local customers have been moved from one provider to another, stands in stark contrast. The Commission's goal should be to ensure that changing local carriers will be as easy as changing long distance providers, and that consumers everywhere will have real choices of local and full-service providers.[3]

The danger of prematurely allowing BellSouth to provide in-region, interLATA service was explained vividly by Ameritech's Chief Executive Officer, who has been quoted as saying that

> The big difference between us and them [GTE] is they're already in long distance. What's their incentive to cooperate?[4]

The Commission must not take away that incentive until the job of opening the local exchange to full competition is done.

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[2] Motion of AT&T to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995) at ¶ 53.

[3] The FCC recognized the importance of this goal when it ordered incumbent LECs to switch a customer's local carrier as easily as its long distance carrier is switched today when the switch requires only a software change. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15711-12, ¶ 421 (1996) ("Local Competition Order"), modified on other grounds, Iowa Utilities Board v. F.C.C., 120 F.3d 753 (8th Cir. 1997).

[4] See "Holding the Line on Phone Rivalry, GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," Washington Post, October 23, 1996 at C12.

I. PCS PROVIDERS DO NOT QUALIFY AS COMPETING PROVIDERS FOR PURPOSES OF TRACK A.

To qualify for Track A, BellSouth relies principally on its interconnection agreements with three PCS providers -- PrimeCo, Sprint Spectrum and Meretel. These appear to be the only providers in Louisiana presently offering facilities-based service to residential and business subscribers. However, PCS providers do not qualify as "competing providers" within the meaning of section 271(c)(1)(A), for at least two reasons.

1. The Commission has the responsibility to interpret the term "competing providers" in light of the purposes of the statutory provision in which it appears. Mobil Oil Corp. v. EPA, 871 F.2d 149, 152-3 (D.C. Cir. 1989). Congress designed Track A because it thought that the presence of an "operational" competitor in the market would "assist" the State Commission and this Commission "in the explicit factual determination . . . that the requesting BOC has fully implemented the interconnection agreement elements set out in the 'checklist' under new section 271(c)(2)." Conf. Rep. No. 104-458 at 148, reprinted at 1996 U.S.Code Cong. & Adm. News 160-61. If one competitor has an access and interconnection agreement, and that competitor has operational experience showing that the agreement actually works, then the Commission can have some degree of confidence that the access which other competitors have to interconnection on the same terms will also actually work (although, of course, one competitor's experience is no substitute for the Commission's thorough evaluation of all 14 points of the statutory checklist).

However, there are several respects in which the access and interconnection which PCS providers need is significantly different from that needed by CLECs and thus is not relevant to

the Commission's assessment of checklist compliance with respect to CLECs. As explained in the declaration of David N. Porter (Attachment 1 to these comments), PCS providers have significant interaction with the incumbent LEC only when they initially establish their network in a particular area and need to connect their central office (and, in some cases, their cell sites) to the ILEC network. Once that is done, the PCS provider does not need significant interaction with the ILEC every time it acquires a new customer. For example, unlike the CLEC, the PCS provider does not have to order unbundled loops or unbundled switching. Nor is there any problem of coordinating cutovers. Typically, the PCS customer also does not want number portability (since the PCS number is usually a new number, with the customer retaining his old number for his wireline connection).[5] In addition, the PCS number frequently is not listed, so that the customer does not require directory listing. And even when the customer desires directory listing, the promptness and accuracy of that service is not as crucial as for business wireline customers, since the PCS number is not the number a business would use for communication with the general public. Porter Decl. ¶ 8.

For these reasons, OSS is simply not a significant issue for PCS providers. That is crucially important. Much of the controversy over BellSouth's application focuses on BellSouth's OSS performance. There is significant evidence in the record that BellSouth's OSS systems simply do not work with the accuracy and speed needed for effective competition from wireline providers. The reason Track A requires the presence of competing providers in the

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[5] As Porter notes, the PrimeCo agreement, one of the three agreements on which BellSouth relies, does not even have a provision for number portability. Porter Decl. ¶ 8. The PrimeCo Agreement appears in the record at App. B Tab 28.

marketplace is to insure that the RBOCs' paper promises have been tested by actual experience. But, with regard to the OSS issue, the PCS providers do not provide any experience that is relevant.

BellSouth argues that PCS providers must be regarded as "competing providers" for Track A, because they are deemed "competing providers" for purposes of section 251(b)(3), requiring incumbent LECs to give "competing providers" dialing parity and nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings. BellSouth Brief at 13. But the Supreme Court has cautioned that "the same words may take on a different coloration in different sections of the securities laws," and the same reasoning applies to the Communications Act. SEC v. National Securities, Inc., 393 U.S. 453, 466 (1969). Where the definitional section of the statute begins with the words "unless the context otherwise requires" (and this language prefaces the statutory definitions in the Communications Act, 47 U.S.C. § 153), "the agency may appropriately modify the definition" where "a literal application of the statutory definition would . . . run counter to the obvious thrust of the section." American Bankers Association v. SEC, 804 F.2d 739, 753 (D.C.Cir. 1986). See also Mobil Oil Corp. v. EPA, 871 F.2d 149, 152 (D.C. Cir. 1989) ("If the expert agency believes that the legislative purposes will best be satisfied by construing the term to mean different things in differnet contexts, then it may act upon that premise.").

The "obvious thrust" of the Track A requirements of section 271(c)(1)(A) is to ensure that there exists operational experience of competitor-RBOC interconnection that is relevant to other competitors that may seek to enter the marketplace, in light of which the practical

availability of the formal promises the RBOC has made can be assessed. Since the operational experience of interconnection between RBOCs and PCS competitors is largely irrelevant to the access and interconnection requirements of other competitors, PCS competitors should not be deemed "competing providers" for purposes of section 271(c)(1)(A).

BellSouth argues that because Congress expressly excluded cellular providers from Track A, the Commission has no discretion to expand that exception to PCS providers. But the express exclusion of cellular does not relieve the Commission from its responsibilty to determine who is a "competing provider." Given the purposes of Track A, the Commission should determine that PCS providers are not "competing providers" because the interconnection and access requirements needed by PCS providers are significantly different from those of potential landline competitors. Thus, PCS operational experience does not provide a valid basis for assessing the practical availablility of competitive checklist items with regard to CLECs.

2. PCS providers are also not "competing providers" because, quite simply, PCS does not offer the type of dialtone alternative to BellSouth's local exchange service that Congress intended should be used as evidence that the local exchange market was sufficiently open to competition to warrant entry into the long distance market. In its most recent Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 97-75, Second Report, Report WT 97-14, at 54 (released March 25, 1997), the Commission explained why it could not classify PCS as a substitute for wireline service. The Commission stated:

> The overall price for wireless service is still well in excess of wireline telephony. . . .The services offered by the few operating broadband PCS carriers are currently

> priced closer to cellular service than to comparable wireline service and therefore it is too early to state that broadband PCS providers' offerings may be perceived as a wireline substitute. Again, the prices on a monthly and per minute basis exceed those of the average wireline monthly telephone service charge.

Id. at 55. Because of the significant price disparity between PCS and wireline service, PCS remains a complement to, rather than a substitute for, the local exchange service provided by BellSouth. *Id.* at 53 ("[t]hirteen percent of Americans are using wireless telephony as a complement to wireline communications") (emphasis added).[6] In that respect, PCS is a close cousin to the funciontally equivalent cellular service, which Congress excluded from Track A eligibility.

A finding that PCS providers are not "competing providers" would also be consistent with other provisions of section 271. Sections 271(b)(3) and (g)(3) authorize a BOC or its affiliate to provide in-region incidental interLATA service in connection with the provision of CMRS, including PCS. In contrast, neither a BOC nor its affiliate is authorized to provide incidental in-region interLATA service in connection with the provision of wireline local exchange service until the Commission finds that the local exchange market is open to competition. If, as BellSouth contends, PCS is a competitive alternative to local telephone service for purposes of Section 271(c)(1)(A), there would be no reason for Congress to have fashioned this distinction.

BellSouth admits that had Congress not excluded cellular carriers from eligibility under Track A, "Track A would have been available to every BOC in every state immediately upon

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[6] BellSouth's marketing surveys of PCS users (Brief at 16 and App.D, Tab 5) do not demonstrate otherwise.

enactment" of the Telecommunications Act of 1996. BellSouth Brief at 15. The same can be said for PCS providers. Two years prior to the passage of the Telecommunications Act of 1996, the Commission required incumbent LECs to provide fair and reasonable interconnection for PCS and all other commercial mobile radio services, because it saw "no distinction between cellular carriers (to whom LECs currently are required to provide such interconnection) and all other CMRS providers, including PCS providers." Implementation of Sections 3(n) and 332 of the Telecommunications Act, GN Docket No. 93-252, Second Report and Order (released March 7, 1994) at ¶273. It was not until the passage of the Telecommunications Act of 1996, however, that incumbent LECs were obligated to provide the fair and reasonable interconnection and access to the essential network facilities that competitive local exchange carriers need to break the incumbent LECs' monopoly stranglehold over the local telephone market. If the presence of PCS providers constituted sufficient proof that the local telephone market was open to competition, the incentive created by Section 271 to induce BOC compliance with Sections 251 and 252 of the Act would have been unnecessary.

As the Commission observed in Ameritech Michigan, the statutory conditions incorporated in the checklist are "designed to ensure that local telecommunications markets are open to competition such that previously precluded competitors in local and long distance markets may now become competitors in each market."[7] Unlike competitive local exchange

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[7] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Michigan, CC Docket No. 97-137, FCC No. 97-298, at ¶21(released August 19, 1997) (emphasis added) ("Ameritech Michigan").

carriers, PCS carriers were not dependent upon Sections 251, 252 and 253(a) of the Act to remove the barriers to entry that would allow them to provide their telecommunications service.

In other words, BellSouth's pre-1996 government-sanctioned monopoly status in the local telephone market did not preclude PCS carriers from entering the CMRS market or from providing the exact same wireless service that BellSouth now claims competes with its local telephone service. Accordingly, the presence of PCS providers operating in Louisiana does not demonstrate that BellSouth has opened its local telephone market to competition.

II. BELLSOUTH HAS FAILED TO DEMONSTRATE THAT ITS PROVISION OF OSS TO COMPETITIVE CARRIERS COMPLIES WITH THE COMPETITIVE CHECKLIST.

BellSouth's application must be denied on the ground that it has not demonstrated that its provision of OSS to competitive carriers is consistent with its checklist obligation to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(ii). With respect to resale services, BellSouth has not shown that the access it offers is "equivalent to the access [BellSouth] provides to itself." Ameritech Michigan ¶ 128. With respect to provisioning of unbundled loops and other network elements, it has not shown that its level of OSS support offers competitors "a meaningful opportunity to compete." Id. ¶ 141. Indeed, BellSouth nowhere states unequivocally that its OSS performance measurements meet the requirements in Ameritech Michigan. Instead, BellSouth argues with the Commission about OSS performance measurements. BellSouth Brief at 24-25.

The Commission has stated that "the most probative evidence that OSS functions are

operationally ready is actual commercial usage." Ameritech Michigan ¶ 138. The Commission "may consider carrier-to-carrier testing, independent third-party testing, and internal testing" where commercial usage is not available, but where commercial usage is available, it remains "the most probative evidence." Id.

In this case, there is little evidence of commercial usage in Louisiana, beyond the irrelevant evidence of PCS service.[8] But BellSouth's OSS functions for Louisiana will be performed out of its offices in Atlanta and Birmingham, using the same systems and staff which it utilizes for OSS support in the rest of its region. Stacy Performance Aff't ¶¶ 4, 5. As the Administrative Law Judge pointed out, "there has been no argument that the technology for accomplishing interconnection in Louisiana differs in any way from the technology used throughout BellSouth's region." Recommendation on 14-Point Checklist (August 14, 1977) at 19. In this respect, this case is like Ameritech Michigan, where the Commission considered evidence from Illinois as well as Michigan (despite the fact that there was a record of commercial usage in Michigan), because "Ameritech provides access to OSS functions on a regional basis from a single point of contact." Ameritech Michigan ¶ 156. For the same reason, BellSouth's actual performance in other states in its region -- where there has been actual commercial usage -- is the "most probative evidence" concerning BellSouth's OSS performance overall.

In Ameritech Michigan, the Commission stressed the critical importance of data on

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[8] The PCS providers in Louisiana, of course, do not require unbundled loops. BellSouth's performance data report for provisioning of unbundled loops during February through September of 1997 states that there were no existing unbundled loops, and no unbundled loop orders, in Lousisiana. Stacy Performance Aff't. Exh. WNS-10 at p. 3.

"average installation intervals" in comparing the RBOC's performance with the performance provided to competing carriers in the ordering and provisioning of resale services. Ameritech Michigan ¶ 167. BellSouth's application fails to present any data on this issue for resale orders. All it presents is a commitment to establish performance standards and collect future data; and even as to future data, for the crucial issue of the time it takes to accept or reject an order, BellSouth states that "sufficient BST data do not exist, and the CLEC results will be produced without direct comparison to BST." Stacy Performance Aff't ¶ 25 and Exh. WNS-6 (emphasis added). Moreover, BellSouth's commitment to collect future data will apply only to resale of POTS, which omits a significant segment of the competitive market demanding complex services. Stacy Performance Aff't Exh. WNS-6.

BellSouth does present performance data (rather than merely a commitment to collect data) for ordering and provisioning unbundled loops. However, it admits that its data are "limited," and that it lacks the data requested by DOJ to assist in comparing UNE performance results between BellSouth and the CLECs. Stacy Performance Aff't ¶ 26.

BellSouth's performance data on provisioning unbundled loops are indeed "limited." These data show only the time intervals that occur after "the issue date of the service order received from the CLEC." Stacy Performance Aff't ¶ 45 and Exh. WNS-11. But these data do not address the problems that arise at the preordering stage. As BellSouth's own explanation of the preordering process demonstrates, several steps must occur before the service order is issued, and it is during that period that the record shows significant problems occur. Stacy OSS Aff't ¶

75.[9]

Nor is BellSouth accurate in its statement that it has provided data showing average installation intervals for unbundled loops. BellSouth Brief at 73. The only support cited for that statement is data showing "% Order Due Dates On Time." Stacy Performance Aff't ¶ 44 and Exh. WNS-10 at pp. 3 and 4. That data does not show average installation intervals as required by Ameritech Michigan, and entirely misses the crucial question of excessive time taken at the preordering stage.

BellSouth relies on its LENS system to provide OSS at the preordering and ordering stage. In the South Carolina proceeding, WorldCom and others provided the Commission a description of the inadequacies of the LENS system as it works in actual operation. See note 9 supra. The Administrative Law Judge in this case confirmed the inadequacies of the LENS system, finding specifically (in reliance on the testimony of BellSouth's own witness) that "competitors are limited by LENS to reserving six lines at a time" while BellSouth itself is not so limited (a problem described by WorldCom in the South Carolina proceeding). Recommended Decision (August 14, 1997) at 26.[10] The Administrative Law Judge also pointed out that the LENS system "is not set up to interact directly with a competitor's own operational

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[9] We attach a copy of the Declaration of Gary Ball (Attachment 2 to these comments), filed by WorldCom in the South Carolina proceeding, which describes WorldCom's experiences with the inadequacies of BellSouth's system for ordering unbundled loops (at ¶ ¶ 5-14).

[10] The Ball Declaration (copy attached) submitted by WorldCom in the South Carolina proceeding described the problem arising from the inability of LENS to accept orders for more than six lines. Ball Decl. ¶ 13.

support systems, and, instead, requires manual input," while "many of BellSouth's own operational support systems can communicate with each other, without manual intervention." Recommended Decision (August 14, 1977) at 26-27.[11] As the Commission recognized in Ameritech Michigan, a system requiring significant manual intervention is particularly unreliable as a basis for finding nondiscriminatory access. Ameritech Michigan ¶ 172. Even if there is no discrimination presently (which BellSouth's data do not show), as the number of orders increases, manual systems are particularly susceptible to backlogs, as well as to informal preferential treatment for in-house personnel. Ameritech Michigan ¶ 172.

Although the Administrative Law Judge made detailed findings on the OSS issue,[12] the Lousiana Public Service Commission, with two Commissioners in dissent, brushed these findings aside in a single sentence, saying only that "[f]ollowing careful consideration and analysis, the Commission concludes that the Operational Support Systems do in fact work and operate to allow potential competitors full non-discriminatory access to the BellSouth system." Lousiana Decision at 15. The Lousiana Commission's conclusory decision on the OSS issue, unsupported by any explanation, is entitled to no deference. An agency's decision that would otherwise be entitled to deference is "vulnerable" if it reverses its ALJ while "fail[ing] to reflect attentive consideration of the ALJ's decision." Dodson v. National Transp. Safety Board, 644 F.2d 647, 651 (7th Cir. 1981). In reversing the ALJ, the Louisiana Commission has merely made

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[11] The need for manual intervention was also described by WorldCom in the South Carolina proceeding. See Ball Declaration (attached) at ¶¶ 5-8.

[12] Recommended Decision (August 14, 1997) at 26-28.

a conclusory and unsupported assertion, without giving "its reasons for taking a different course." Greater Boston Television Corp. v. F.C.C., 444 F.2d 841, 853 (D.C. Cir. 1970). On that ground alone, the Louisiana Commission's decision cannot be given probative weight.

There is an additional reason why the Louisiana Commission's decision on OSS compliance is entitled to no deference. On October 16, 1997, the Alabama Public Service Commission suspended its proceedings under section 271 on compliance of BellSouth's SGAT with the competitive checklist, pending the outcome of further proceedings on the adequacy of BellSouth's OSS and on establishment of permanent cost-based rates. With respect to OSS compliance, the Alabama Commission concluded:

> It appears to us that BellSouth's OSS interfaces must be further revised to provide nondiscriminatory access to BellSouth's OSS systems as required by § 251(c)(3) of the '96 Act. We have concerns that such nondiscriminatory access is not currently being provided.[13]

In addition, on November 19, 1997, the Florida Public Service Commission issued an order concluding that BellSouth had not met the requirements for interLATA authority in Florida, and finding specifically that BellSouth's OSS performance was not adequate:

> A major area of concern with respect to the interfaces offered by BellSouth is the amount of manual intervention that is required on behalf of an ALEC service representative. The amount of manual intervention required when placing a non-complex order via the EDI interface is far in excess of how BellSouth would place the same order. The primary problem is that Bell South does not provide a pre-ordering interface that is integrated with an ordering interface that provides these functions in essentially the same time and manner as BellSouth's internal systems.
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> . . . .

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[13] Decision at p. 7. A copy of the decision of the Alabama Public Service Commission was attached to the DOJ Comments in the South Carolina proceeding as Exhibit 5.

> In summary, we find that the interfaces and processes offered by BellSouth do not permit an ALEC to perform an OSS function in substantially the same time and manner as BellSouth performs the functions for itself. . . . .

Florida Public Service Commission, Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Dkt. 960786-TL (Nov. 19, 1997) at §§ VI.B.3.j, VI.M.4 (emphasis added).

BellSouth concedes that it "uses the same processes with respect to checklist items in all of its nine states." BellSouth Brief at 39. Clearly, the Commission cannot arrive at different decisions in Louisiana than in Florida or Alabama, when the facts are the same. The Commission must "apply a uniform standard for all states in a BOC's region, and a uniform standard that applies to all BOCs." DOJ South Carolina Comments at 15. Faced with conflicting State Commission decisions, this Commission must decide the case on the basis of its own independent judgment.

At the very least, the ALJ's findings describing the inadequacy of the LENS system create at least serious doubts as to the system's adequacy, sufficient to justify an insistence on comparative performance data before the Commission concludes that the system can be relied on to provide adequate and non-discriminatory service. The Commission should insist that such data be provided, before concluding that the local exchange market in Louisiana is competitive.

III. BELLSOUTH HAS NOT SHOWN THAT IT WILL EXERCISE ITS RIGHT TO DISCONNECT PREVIOUSLY-COMBINED NETWORK ELEMENTS IN A MANNER THAT DOES NOT DISCRIMINATE AGAINST REQUESTING CARRIERS AND ALLOWS THEM TO COMBINE THE ELEMENTS TO PROVIDE TELECOMMUNICATIONS SERVICE.

The Eighth Circuit has held that where a CLEC orders unbundled network elements that are connected in the ILEC's network, the ILEC may disconnect the elements before providing them to the CLEC. Iowa Utilities Board v. F.C.C., Order on Petitions for Rehearing, 1997 WL 658718 (8th Cir. Nos. 96-3321 et al., October 14, 1997). WorldCom, with several other parties, is petitioning for certiorari from the Eighth Circuit's decision. However, assuming for present purposes that the decision remains the law, BellSouth's application is deficient because it has not demonstrated how it will exercise its new "right to disconnect" consistently with its other obligations under section 251 and the competitive checklist.

Two ILEC obligations under section 251 and the competitive checklist are particularly relevant to any exercise by BellSouth of its newly-established "right to disconnect": the obligation to provide "nondiscriminatory" access to network elements (§ § 251(c)(3), 271(c)(2)(B)(ii)), and the obligation to provide network elements in a manner that allows requesting carriers to combine them in order to provide telecommunications service (§ 251(c)(3)).

Nothing in the Eighth Circuit's decision authorizes the ILECs to violate these statutory obligations. Indeed, the Eighth Circuit made it clear that it expected the ILECs to comply with their legal obligation to "allow entrants access to their networks" in order to combine elements the ILEC has disconnected. Iowa Utilities Board v. FCC, Order on Petitions for Rehearing, 1997

WL 658718 at *2 (Oct. 14, 1997). BellSouth quotes the Eighth Circuit's statement that "the degree and ease of access that competing carriers may have to incumbent LECs' networks is . . . far less than the amount of control that a carrier would have over its own network." Iowa Utilities Board, supra, 120 F.3d at 816, quoted at BellSouth Brief 47-48. But nothing in that statement negates the LECs' obligation to provide access sufficient to comply with its obligations under section 251(c)(3).

The Commission has rulemaking authority under section 251(d)(2) to define the ILECs' duty to make network elements available, as the Eighth Circuit itself recognized. Iowa Utilities Board v. F.C.C., 120 F.3d 753, 794 n.10 (8th Cir. 1997). In addition, the Commission has authority in this proceeding to require a demonstration of compliance with the competitive checklist; and compliance with section 251(c)(3) is part of the competitive checklist. 47 U.S.C. § 271(c)(2)(B)(ii). Under both these grants of authority, the Commission has the responsibility to insure that BellSouth exercise its "right to disconnect" in a manner that is consistent with avoidance of discrimination and allows combination of unbundled network elements as mandated by the Act.

In its Reply Brief in the South Carolina case, BellSouth suggests that it is premature for the Commission to address the issues arising from its "right to disconnect," until BellSouth actually receives a request for access to combine unbundled elements which it has disconnected prior to providing them to the requesting carrier. BellSouth South Carolina Reply Brief at 35-36.

However, BellSouth has now made it clear that it intends to exercise its "right to disconnect" in a manner which will violate the competitive checklist in at least two respects, or at

least raise such significant issues with respect to checklist compliance that further information is needed before the application can be approved.

The manner in which BellSouth proposes to exercise its "right to disconnect" raises serious issues with respect to its obligations under section 251(c)(3) to 1) provide nondiscriminatory access, and 2) provide unbundled elements in a manner allowing requesting carriers to combine them to provide telecommunications service.

A. BellSouth proposes to exercise its "right to disconnect" in a manner that discriminates against competitive carriers, or at least raises significant issues of discrimination.

The affidavit of David N. Porter which WorldCom filed with its reply comments in the South Carolina proceeding (Attachment 3 to these comments) explains that there are several instances in which the interconnection between different elements in a telephone network is customarily controlled by electronics or software rather than manually. For example, the connection between the local loop and the central office, once physically established, is subsequently controlled electronically. If the ILEC disconnects service to a customer for any reason, no physical disconnection takes place; instead, the ILEC simply instructs its switch not to let non-emergency calls through. Similarly, when reconnection is requested, no physical operation is performed; instead, the ILEC instructs its system software to achieve reconnection. Id. at ¶ 4.

A similar situation exists with respect to the switch-trunk connection. While a physical connection is established initially, it is subsequently controlled through system software. Thus when the ILEC decides to reroute traffic through different exit trunks, for example, it does not

physically disconnect and reconnect wires; it simply gives the appropriate instructions through its system software. Id. at ¶ 6.

Regarding nondiscriminatory access to OSS functions, the Commission has determined that a BOC must provide access "equivalent to the access it provides to itself." Ameritech Michigan Order, ¶ 128. The same nondiscrimination obligation governs here. If the ILEC, when acting for its own purposes, controls disconnection and connection through an electronic process, then use of a much more expensive and disruptive physical process when the ILEC is providing network elements to competing carriers is discriminatory. Porter South Carolina Aff't ¶ 5. The Eighth Circuit ruled that the ILEC could disconnect; but it did not rule that the ILEC could deliberately use the most expensive method of disconnection, when a cheaper method is available and is used by the ILEC when dealing with itself rather than a competitor.

In its reply comments in the South Carolina proceeding, BellSouth has now made it clear that it will physically separate combined elements before providing them to a competing carrier, whenever physical separation is possible. Varner Reply Aff't (BellSouth South Carolina Reply Brief Tab 9) at ¶ 32 ("If a UNE can be physically separated, BellSouth will deliver it on a separated basis.").

By choosing physical rather than electronic disconnection, where the latter is available and used for internal purposes, BellSouth is choosing to vandalize its network for the sole purpose of "impos[ing] costs on competitive carriers that incumbent LECs would not incur," contrary to "the requirement of § 251(c)(3) that incumbent LECs provide nondiscriminatory access to unbundled elements." Local Competition, Third Order on Reconsideration, ¶ 44.